

NOTE: CHANGES MADE BY THE COURT

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

F.E.A., INC.,

Plaintiff,

v.

JOHN DOES 1-5, JANE DOES 1-4 AND
XYZ COMPANY,

Defendants.

Case No. CV 16-03062-AB (JEMx)

~~[PROPOSED]~~ PRELIMINARY
INJUNCTION AND SEIZURE
ORDER

Plaintiff F.E.A., Inc. ("Plaintiff") having moved for a preliminary injunction enjoining and restraining the defendants from manufacturing, selling or distributing merchandise bearing the federally registered trademarks, service marks, likenesses, logos, and/or other indicia of the Group "JOURNEY" (collectively the "Group's Trademarks") and ordering the seizure and impounding of such articles; Plaintiff's application having come on for a hearing before the Honorable André Birotte Jr. on the 16th day of May, 2016, at the United States Courthouse in the Central District of California; and Plaintiff having appeared by its attorneys, and there having been no other appearances;

Now, on presentation and consideration of Plaintiff's application for a preliminary injunction and seizure order, the declaration in support thereof and all other pleadings and prior proceedings in this matter, the Court hereby finds:

1. By reason of the substantial and continuous use of the Group's Trademarks

PRELIMINARY INJUNCTION AND SEIZURE ORDER

1 in connection with the Group's work as performers, said marks have acquired meanings
2 identified with the Group and with products and services associated with them;

3 2. The Defendants, and those in active concert or participation with such
4 Defendants, have infringed upon Plaintiff's rights in the Group's Trademarks, as well
5 committed acts of unfair competition against Plaintiff herein by manufacturing,
6 distributing, offering for sale and selling merchandise bearing any or all of the Group's
7 Trademarks at or near the sites of the Group's concerts, without having obtained a
8 license or any other authorization to do so, as alleged in the complaint;

9 3. The Defendants' acts, and those in active concert or participation with
10 them, constitute a violation of the U. S. Trademark Act in that they: a) involve goods or
11 services; b) are activities which affect interstate commerce; and c) infringe the
12 trademark and/or bear a false designation of the source or origin of such goods or are
13 likely to cause confusion, mistake or deception as to the affiliation, connection,
14 association, sponsorship or approval of Plaintiff and/or the Group with respect to such
15 goods; and

16 4. Defendants, and those in active concert or participation with them, will
17 continue to sell such unauthorized merchandise unless enjoined by the Court;

18 **NOW, THEREFORE, IT IS HEREBY ORDERED** that the Defendants, their
19 agents, servants, employees, attorneys, successors, and assigns, and all persons, firms,
20 and corporations acting in active concert or participation with said Defendants, are
21 enjoined and restrained from:

22 (A) Using any or all of the Group's Trademarks in connection with the sale,
23 offering for sale, distribution, and/or advertising of any clothing or other merchandise;

24 (B) Manufacturing, distributing, selling, and/or holding for sale any clothing or
25 other merchandise which carries or otherwise uses any or all of the Group's
26 Trademarks; or

27 (c) Aiding, abetting, inducing, or encouraging another to perform any of the
28 acts enjoined herein.

1 **IT IS FURTHER ORDERED**, that the U.S. Marshal for this district or for any
2 district in which Plaintiff seeks to enforce this Order in the United States, the state
3 police, local police, local deputy sheriffs, off-duty officers of the same, and any person
4 acting under their supervision (collectively "Process Servers"), are hereby similarly
5 authorized to seize and impound any and all unauthorized merchandise bearing any or
6 all of the Group's Trademarks (i.e. of **JOURNEY**) or any colorable imitations or
7 variations thereof, or associated marks which Defendants or their agents, employees or
8 representatives attempt to sell or are holding for sale in the vicinity of any of the
9 Group's concerts from four (4) hours before to four (4) hours after any performance of
10 the Group within a four (4) mile vicinity of the halls, stadiums or arenas at which the
11 Group shall be performing or elsewhere where such merchandise is being sold, held for
12 sale or is otherwise found, including in any carton, bag, vehicle, or container in which
13 the merchandise is transported or stored. All clothing, jewelry, photographs, posters
14 and other merchandise bearing any or all of the Group's Trademarks, or any colorable
15 imitations or variations thereof, sold and held for sale in the vicinity of the arenas or
16 other venues at which the Group shall be performing, or elsewhere where such
17 merchandise is being sold, held for sale or otherwise found, shall be deemed to be
18 merchandise subject to the seizure provisions of this Order.

19 **IT IS FURTHER ORDERED**, that service of a copy of this Order, together
20 with the Summons and Complaint, be made upon Defendants personally by the Process
21 Servers before the seizure provided herein is effected so as to provide actual notice of
22 this Order as required by Rule 65(d)(2) of the Federal Rules of Civil Procedure.

23 **IT IS FURTHER ORDERED**, that each and every Defendant served with a
24 copy of this Order promptly identify himself or herself to the aforementioned Process
25 Server and that the Process Server or agents for Plaintiff be allowed to photograph,
26 videotape or otherwise identify the Defendant.

28 **IT IS FURTHER ORDERED**, that the Process Server shall offer a receipt to

1 each person from whom goods are seized.

2 **IT IS FURTHER ORDERED**, that any Defendant who is hereafter served with
3 a copy of this Order who objects to the provisions herein may submit his or her
4 objections to this Court or otherwise move for relief from this Court within ten (10)
5 days of the date of seizure according to the Federal Rules of Civil Procedure, but no
6 such objection shall serve to suspend this Order or stay the terms hereof unless
7 otherwise ordered by this Court.

8 **IT IS FURTHER ORDERED**, that all unauthorized items heretofore or
9 hereafter seized in this action be delivered up to the Plaintiff or the persons designated
10 above, pending final disposition of this matter.

11 **IT IS FURTHER ORDERED**, that the bond deposited with the Clerk of this
12 Court to secure payment of costs incurred in enforcing the provisions of the temporary
13 restraining order and any damages sustained by any party who is found to have been
14 wrongfully enjoined thereby is hereby continued until final disposition of this matter.

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16 **IT IS SO ORDERED.**

17 Dated: May 17, 2016

18 Time: 11:52 AM



HON. ANDRÉ BIROTTE JR.
UNITED STATES DISTRICT JUDGE

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21 **CC: Fiscal, USM**
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